

## REMARKS

After entry of this Amendment, the pending claims are: claims 16-32. The Office Action dated December 7, 2007 has been carefully considered. Claims 1-15 have been canceled without prejudice while claims 16-32 have been added to comply with customary U.S. patent practices. Support for claims 16-32 can be found throughout the Specification and Drawings and specifically in paragraph Nos. 35-38. No new matter has been added. Reconsideration and allowance of the pending claims in view of the above Amendments and the following Remarks is respectfully requested.

In the Office Action dated December 7, 2007, the Examiner:

- objected to the Specification, and in particular, the Title for not being descriptive and the arrangement of the Specification. Applicants have respectfully amended the Specification including the Title. It is believed that this objection has been overcome. As such, withdrawal of this objection is respectfully requested.
- objected to claims 6-15 as being improper for containing multiple dependent claims which depend from other multiple dependent claims; and
- rejected claims 1-5 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,899,734 to Castro *et al.* ("Castro").

## INDEPENDENT CLAIM 1

Independent claim 1 and dependent claims 2-5 have been rejected as being anticipated by Castro. Dependent claims 6-15 were objected to for being improper for containing multiple dependent claims which depend from other multiple dependent claims. Independent claim 1 and dependent claims 2-15 have been canceled. As such, it is believed that these rejections are now moot. Withdrawal of these rejections is respectfully requested.

**NEWLY ADDED INDEPENDENT CLAIM 16**

Independent claim 16 recites an intervertebral implant comprising an intervertebral spacer body having at least an upper endface sized and configured to contact at least a portion of an upper vertebra; and at least one end member including a plurality of spikes for engaging at least a portion of the upper vertebra, wherein the at least one end member is slidably movable with respect to the intervertebral spacer body so that the at least one end member is moveable between a first position and a second position wherein when in the first position the plurality of spikes formed on the at least one end member extend beyond the upper endface of the spacer body and when in the second position the plurality of spikes formed on the at least one end member do not extend beyond the upper endface of the spacer body.

In order to expedite prosecution of the present application, the following remarks are offered with respect to Castro. Castro discloses a modular fusion cage implant 10 including a plurality of ring-like segments 113 which are mechanically stackable so that the overall height of the implant can be adjusted. The implant 10 also includes an end cap 40, 140 for mounting on either or both ends of the implant 10.

It is respectfully submitted that there is absolutely no disclosure, teaching or suggestion in Castro of an implant comprising an intervertebral spacer body and at least one end member including a plurality of spikes, wherein the at least one end member is slidably movable with respect to the intervertebral spacer body so that the at least one end member is moveable between a first position and a second position wherein when in the first position the plurality of spikes formed on the at least one end member

extend beyond the upper endface of the spacer body and when in the second position the plurality of spikes formed on the at least one end member do not extend beyond the upper endface of the spacer body.

Therefore, it is respectfully submitted that Castro does not disclose, teach, or suggest all of the limitations of independent claim 16. Thus, it is respectfully submitted that independent claim 16 is allowable over the cited prior art. Allowance of independent claim 16 is respectfully requested.

Furthermore, as claims 17-24 all depend from independent claim 16, it is submitted that these claims are equally allowable. Allowance of claims 17-24 is also respectfully requested.

#### **NEWLY ADDED INDEPENDENT CLAIM 25**

Independent claim 25 recites an intervertebral implant comprising an intervertebral spacer body having an upper endface sized and configured to contact at least a portion of an upper vertebra and a lower endface sized and configured to contact at least a portion of a lower vertebra; a first end member including a plurality of spikes for engaging at least a portion of the upper vertebra; and a second end member including a plurality of spikes for engaging at least a portion of the lower vertebra; wherein the first and second end members are slidably movable with respect to the intervertebral spacer body so that the first and second end members are moveable between a first position and a second position wherein when in the first position the plurality of spikes formed on the first end member extend beyond the upper endface of the spacer body and the plurality of spikes formed on the second end member extend beyond the lower endface of the spacer body, and when in the second position the plurality of spikes formed on

the first end member do not extend beyond the upper endface and the plurality of spikes formed on the second end member do not extend beyond the lower endface.

It is respectfully submitted that there is absolutely no disclosure, teaching or suggestion in Castro of an implant comprising an intervertebral spacer body and first and second end members wherein the first and second end members are slidably movable with respect to the intervertebral spacer body so that the first and second end members are moveable between a first position and a second position wherein when in the first position the plurality of spikes formed on the first end member extend beyond the upper endface of the spacer body and the plurality of spikes formed on the second end member extend beyond the lower endface of the spacer body, and when in the second position the plurality of spikes formed on the first end member do not extend beyond the upper endface and the plurality of spikes formed on the second end member do not extend beyond the lower endface.

Therefore, it is respectfully submitted that Castro does not disclose, teach, or suggest all of the limitations of independent claim 25. Thus, it is respectfully submitted that independent claim 25 is allowable over the cited prior art. Allowance of independent claim 25 is respectfully requested.

Furthermore, as claims 26-31 all depend from independent claim 25, it is submitted that these claims are equally allowable. Allowance of claims 26-31 is also respectfully requested.

### **NEWLY ADDED INDEPENDENT CLAIM 32**

Independent claim 32 recites a method of implanting an intervertebral implant into an intervertebral disc space between upper and lower vertebrae, the method including the steps of providing an intervertebral implant having an intervertebral spacer body having an upper endface and a lower endface for contacting the upper and lower vertebrae, respectively; and first and second end members, wherein the first and second end members are slidably disposed on the intervertebral spacer body, the first and second end members including a plurality of spikes formed on a surface thereof; inserting the intervertebral implant into the intervertebral disc; moving the first and second end members with respect to the intervertebral spacer body so that the plurality of spikes engage the upper and lower vertebrae, respectively; and securing the first and second end members with respect to the intervertebral spacer body.

It is respectfully submitted that there is absolutely no disclosure, teaching or suggestion in Castro of providing an intervertebral implant having an intervertebral spacer body having an upper endface and a lower endface for contacting the upper and lower vertebrae, respectively; and first and second end members, wherein the first and second end members are slidably disposed on the intervertebral spacer body, the first and second end members including a plurality of spikes formed on a surface thereof; inserting the intervertebral implant into the intervertebral disc; moving the first and second end members with respect to the intervertebral spacer body so that the plurality of spikes engage the upper and lower vertebrae, respectively; and securing the first and second end members with respect to the intervertebral spacer body.

Therefore, it is respectfully submitted that Castro does not disclose, teach, or suggest all of the limitations of independent claim 32. Thus, it is respectfully submitted that independent claim 32 is allowable over the cited prior art. Allowance of independent claim 32 is respectfully requested.

### CONCLUSION

No fee is believed due for this submission. If, however, the Commissioner determines otherwise, the Commissioner is authorized to charge any fees which may now or hereafter be due in this application to Deposit Account No. 19-4709.

In the event that there are any questions, or should additional information be required, please contact Applicants' attorney at the number listed below.

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Respectfully submitted,

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